

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

COUNTY OF ORANGE,

Plaintiff and Respondent,

v.

AMERICAN CONTRACTORS
INDEMNITY COMPANY,

Defendant and Appellant.

G045015

(Super. Ct. No. 09NF3446)

O P I N I O N

Appeal from a judgment and postjudgment order of the Superior Court of Orange County, Jonathan S. Fish, Judge. Affirmed.

E. Alan Nunez for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, and Nicole M. Walsh, Deputy County Counsel, for Plaintiff and Respondent.

* * *

The Orange County Superior Court forfeited a bail bond due to a criminal defendant's failure to appear at a hearing. The surety on the bond, American Contractors Indemnity Company (surety), had the defendant apprehended in Los Angeles County, but did not seek to vacate the forfeiture and exonerate the bond before the court entered summary judgment. After the judgment's entry, surety unsuccessfully sought relief from it.

Surety appeals from both the summary judgment and the postjudgment ruling. Two issues are presented. First, County of Orange (County) claims the appeal must be dismissed because surety's appeal from the summary judgment is untimely. Surety disagrees, arguing the filing of its postjudgment motion extended the time to appeal from the summary judgment.

The second issue concerns whether the trial court erred in failing to exonerate the bond on its own motion after learning of the defendant's arrest in Los Angeles County. Surety claims that under Penal Code section 1305, subdivision (c)(3) (all further statutory references are to the Penal Code unless otherwise indicated), the trial court's knowledge the defendant had been apprehended in another county before entry of summary judgment obligated it to vacate the forfeiture and exonerate the bond even without a request to do so.

We conclude surety timely appealed from the summary judgment, but the trial court did not violate section 1305, subdivision (c)(3). Therefore, we affirm the judgment.

FACTS

Surety issued a \$100,000 bail bond to secure the release of defendant Lavone King from custody pending an underlying criminal proceeding against him. On May 12, 2010, King failed to appear in court. The court forfeited his bail and issued a

bench warrant for his arrest. The court clerk mailed notice of the forfeiture to surety and the bail bond agent the following day. The exoneration period expired on November 14.

Surety's agents located King in Long Beach and had him arrested. The Los Angeles County Sheriff's Department placed a hold on him in the Orange County case. The Orange County Sheriff's Department served a bench warrant on King and arrested him in conjunction with the underlying Orange County case on August 11. Notice of this event was entered in the court's minutes the same date.

On December 3, the court entered summary judgment on the bond. Surety moved to vacate it, set aside the forfeiture, and exonerate the bond on December 27, 2010. The trial court denied the motion on March 18, 2011. Surety filed this appeal from both the summary judgment and the postjudgment order seven days later.

DISCUSSION

1. Appealability

County claims this appeal should be dismissed because surety failed to timely appeal from the summary judgment. Surety responds that the filing of its motion to vacate the summary judgment extended the time to file its appeal. We agree with surety's argument.

Summary judgment on a bail bond forfeiture is appealable where the surety claims the judgment was not entered in accordance with the consent it gave in the undertaking. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 663-664.) Generally, the time to file an appeal is the earlier of either 60 days after the clerk serves the parties with notice of entry of judgment or a file-stamped copy of the judgment, 60 days after the appellant serves or is served with a notice of entry of judgment or a file-stamped copy of the judgment, or 180 days after entry of judgment. (Cal. Rules of Court, rule 8.104(a)(1)-(3).) The timely filing of an appeal is jurisdictional

and if an appellant fails to comply the appeal must be dismissed. (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113.)

The clerk mailed a copy of the summary judgment to the parties on December 3, 2010, the same day the court entered it. The 60th day thereafter fell on February 1, 2011. County claims it served notice of entry of judgment on surety on December 14, 2010. Assuming this act triggered the time for taking an appeal, the time to do so would have expired on Saturday, February 12, 2011, making the last day to file a notice of appeal Monday, February 14. (Code Civ. Proc., §§ 12, 12a, subd. (a).) Surety filed its notice of appeal on March 25, long after the foregoing dates.

However, “If, within the time prescribed by rule 8.104 to appeal from the judgment, any party serves and files . . . a *valid* motion . . . to vacate the judgment, the time to appeal from the judgment is extended for all parties until . . . 30 days after the superior court clerk or a party serves, an order denying the motion or a notice of entry of that order” (Cal. Rules of Court, rule 8.108(c)(1), italics added.)

County argues surety’s motion to vacate was not valid because it did not comply with the procedural requirements of Code of Civil Procedure section 663a. That statute requires a motion to vacate a judgment brought under Code of Civil Procedure section 663 be filed no later than 15 days after “the date of mailing of notice of entry of judgment by the clerk of the court . . . , or service upon him by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest.” (Code Civ. Proc., § 663a, subd. 2.) Citing the court clerk’s mailing of a conformed copy of the summary judgment on December 3, 2010, County claims surety needed to file the motion to vacate the summary judgment by December 20, and since it waited until December 27 to do so, the motion was not valid under California Rules of Court, rule 8.108(c).

However, California Rules of Court, rule 8.108(c) applies to any valid motion that seeks to vacate the judgment on a recognized ground. (*Maides v. Ralphs*

Grocery Co. (2000) 77 Cal.App.4th 1363, 1367; *Estate of Lacy* (1975) 54 Cal.App.3d 172, 177.) Surety notes Code of Civil Procedure sections 663 and 663a are statutes applicable to civil actions in general. It relies on section 1308 as a basis for extending the time to appeal from the entry of the summary judgment after the forfeiture of a bail bond. Regarding appellate procedures, the “specific statutory scheme [governing forfeiture or exoneration of bail] prevails over the general provisions of [the] Code of Civil Procedure’ [Citation.]” (*County of Sacramento v. Insurance Co. of the West* (1983) 139 Cal.App.3d 561, 565.) We will therefore focus on section 1308 to determine whether the motion to vacate the judgment was valid.

In part, section 1308 declares “[n]o court . . . shall accept any person or corporation as surety on bail if any summary judgment against that person or corporation entered pursuant to Section 1306 remains unpaid after the expiration of 30 days after service of the notice of the entry of the summary judgment, provided that, if during the 30 days an action or *proceeding* available at law is initiated to determine the validity of the order of forfeiture or summary judgment rendered on it, this section shall be rendered inoperative until that action or proceeding has finally been determined” (§ 1308, subd. (a), italics added.) We conclude the statute’s reference to a “proceeding” includes a properly filed motion.

Cases have recognized “[t]he word “proceeding” necessarily has different meanings, according to the context and the subject to which it relates” (*The Recorder v. Commission on Judicial Performance* (1999) 72 Cal.App.4th 258, 270.) Generally, it “refers to the form and manner of conducting judicial business before a court or judicial officer. [Citations.] It may also refer to a mere procedural step that is part of the larger action or special proceeding. [Citation.]’ [Citations.]” (*Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, 1105 [discovery demand constituted proceeding allowing party to seek relief from default under Code of Civil Procedure section 473].) But even when “used in its technical legal sense,” proceeding “refers to something done

or to be done in a court of justice or before a judicial officer,” and the filing of “[a] motion in the superior court . . . is ‘[a] good illustration of what is meant by the term’” (*Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 742 [motion to dismiss action for failure to answer interrogatories constitutes “a ‘proceeding’ within the meaning of” Code of Civil Procedure section 286, barring further proceedings against a party whose prior attorney has ceased representing it until after service of written notice to appoint new counsel or appear in person].)

The court clerk served surety with a conformed copy of the summary judgment on December 3, 2010. Surety moved to vacate the summary judgment 24 days later. Therefore, the motion was valid and extended the time to appeal from the underlying summary judgment until 30 days after the court denied the motion pursuant to California Rules of Court, rule 8.108(c). The trial court denied surety’s motion on March 18, 2011, and surety filed this appeal one week later, rendering it timely as to the summary judgment.

2. Trial Court’s Entry of Summary Judgment Was Valid

Generally, when the court declares the bail forfeited, it is required to notify the bail bond agent and surety of the forfeiture within 30 days after the forfeiture’s entry. (§1305, subd. (b).) The surety has 180 days, plus 5 additional days where, as here, service of the forfeiture notice is effected by mail, to “either . . . produce the accused in court and have the forfeiture set aside, or . . . demonstrate other circumstances requiring the court to vacate the forfeiture.” (*People v. American Contractors Indemnity Co.*, *supra*, 33 Cal.4th at p. 657.)

Where a defendant is subsequently arrested by law enforcement or apprehended by the surety within the 180-day exoneration period, section 1305 subdivision (c) lists the various ways a bail forfeiture may be vacated and the bond exonerated. Subdivision (c)(1) and subdivision (c)(2) outline situations when a court is

required to vacate the order of forfeiture and exonerate the bond “on its own motion.” Subdivision (c)(1) of section 1305 applies where the defendant appears in the court that forfeited bail within the 180-day exoneration period. Subdivision (c)(2) applies “[i]f, *within the county* where the case is located, the defendant is surrendered into custody by the bail or is arrested in the underlying case within the 180-day period and is subsequently released from custody prior to an appearance in court” (Italics added.)

In contrast, subdivision (c)(3) of section 1305 provides “[i]f, outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, the court shall vacate the forfeiture and exonerate the bail.” “Noticeably absent from this subdivision is a provision requiring the trial court to act on its own motion or providing for exoneration by operation of law.” (*People v. Accredited Surety & Casualty Co., Inc.* (2012) 203 Cal.App.4th 1490, 1496, fn. omitted.)

The Supreme Court examined a court’s obligations under section 1305, subdivision (c)(3) in *People v. Indiana Lumbermens Mutual Ins. Co.* (2010) 49 Cal.4th 301. It held a surety must affirmatively seek relief within the exoneration period and that it was not incumbent upon the court to vacate the bail forfeiture and exonerate bail sua sponte. (*Id.* at p. 313.) There, a defendant failed to appear in a Los Angeles County case and his bail was forfeited. Within the exoneration period, the bail agent surrendered the defendant to the San Bernardino County Sheriff’s Department where he also faced unrelated drug charges. After the exoneration period expired and summary judgment was entered, the surety moved to vacate the judgment, set aside the forfeiture and exonerate the bond. The Supreme Court stated, “While section 1305 is somewhat less than explicit regarding the timing of a motion for relief from forfeiture under subdivision (c)(3), the most natural construction would be to apply the provisions of subdivision (i) contemplating a motion within the 180-day period.” (*Id.* at p. 308.)

The facts of this case are similar to *Lumbermens*'s. The only distinction is that, in *Lumbermens*, the trial court was apparently unaware the defendant had been arrested in another county, whereas here the trial court's minutes reflect it at least constructively knew of King's incarceration in Los Angeles County and service of the warrant for his arrest before the exoneration period expired. Surety seeks to distinguish *Lumbermens* on this basis, noting the Supreme Court's opinion acknowledged a "court may not know that the defendant is in custody outside the county." (*People v. Indiana Lumbermens Mutual Ins. Co.*, *supra*, 49 Cal.4th at pp. 305-306.) It argues a surety need only move to exonerate the bond when the court in the underlying case lacks knowledge the defendant is in custody outside the county.

This argument was recently considered and rejected in *People v. Accredited Surety & Casualty Co., Inc.*, *supra*, 203 Cal.App.4th 1490. There, a defendant failed to appear at a scheduled hearing in Stanislaus County and the court forfeited his bail. Shortly thereafter, the defendant was arrested in Merced County and the Stanislaus County court signed an order requiring the defendant's transfer to its jurisdiction. However, the surety did not move to vacate the bail forfeiture within the exoneration period and the trial court entered summary judgment against it. On appeal, the surety relied on both subdivisions (e) and (c)(3) of section 1305 to argue the Stanislaus County court's knowledge of the defendant's incarceration in Merced County required it to toll the exoneration period.

As for subdivision (e), which contains language identical to that found in subdivision (c)(3), the appellate court declared "[S]ubdivision (c)(1) and (2) [of section 1305] unequivocally establish that the Legislature knows how to require the trial court to act on its own motion and how to craft appropriate relief if the trial court fails to act. The Legislature's omission of this language in subdivision (e) precludes us from adding such a requirement. [Citation.]" (*People v. Accredited Surety & Casualty Co., Inc.*, *supra*, 203 Cal.App.4th at p. 1501.) Concerning subdivision (c)(3), *Accredited* noted

“*Lumbermens* . . . established that [the surety] was required to make a motion to vacate forfeiture of the bail prior to the expiration of the exoneration period.” (*Id.* at p. 1502.)

Given the rulings in *Lumbermens* and *Accredited*, while the record reflects the trial court knew of King’s arrest in Los Angeles County within the exoneration period, surety still had the duty to affirmatively move to vacate the forfeiture and for exoneration of the bond. “[W]e cannot ignore the plain language of the statute. If the Legislature finds the failure to vacate the forfeiture and exonerate the bond unjust in such cases, it can amend the statute.” (*People v. Lexington National Ins. Co.* (2007) 158 Cal.App.4th 370, 375.)

DISPOSITION

The judgment and postjudgment order of the trial court are affirmed.
Respondent shall recover its costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.